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**MAILED**

**FEB 28 2011**

**OFFICE OF PETITIONS**

In re Application of  
Patrick Lenoir  
Application No. 10/591,431  
Filed: November 14, 2006  
Attorney Docket No. 016782-0364

:  
: DECISION ON APPLICATION  
: FOR PATENT TERM ADJUSTMENT  
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. §1.705(b)" filed December 10, 2010. Applicants request that the patent term adjustment at the time of the mailing of the Notice of Allowance be corrected from 322 days to 465 days.

The application for patent term adjustment is **DISMISSED**.

On September 17, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 322 days. The instant application for patent term adjustment was timely filed<sup>1</sup>. Applicants dispute the reduction of 143 days of PTA for the filing of an information disclosure statement on August 5, 2010 after the filing of a Request for Continued Examination.

Applicant's arguments have been considered, but not found to be persuasive. Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution.

In this instance, the filing of the Information Disclosure Statement on August 5, 2010 is considered a failure to engage under 1.704(c)(8). The record does not support a conclusion that the IDS was expressly requested by the examiner and neither did the IDS include a 1.704(d) statement.

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<sup>1</sup> PALM records indicate that the Issue Fee was also received on December 10, 2010.

In view thereof, it is concluded that the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is 322 days.

The record supports a conclusion that this application is not subject to a terminal disclaimer”

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial 'P' and 'B'.

Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions